

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1, 2, 5, 7-11, 14, 15, 17-21, 24-27 and 30-32 are pending in the present application. No claim amendments are presented, thus no new matter is added.

In the Office Action, Claims 1, 2, 5, 7-11, 14, 15, 17-21, 24-27 and 30-32 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hayes et al. (U.S. Pub. 2003/0200216, herein Hayes) in view of Inoue et al. (U.S. Pub. 2004/0117309, herein Inoue).

Applicants respectfully traverse the outstanding grounds of rejection because Inoue (US Pub. 2004/0117309) is not prior art.

The filing date of the present Application is October 31, 2003. Inoue was published on June 17, 2004. This date is after the filing date of the present application (October 31, 2003). Thus, Inoue (US Pub. 2004/0117309) is not prior art under 35 U.S.C. §§ 102(a) and 102(b).

Furthermore, Inoue (US Pub. 2004/0117309) has no 35 U.S.C. §102(e) prior art date. Inoue (US Pub. 2004/0117309) is a reference based on the national stage (35 U.S.C. §371) of an International Application filed on or after November 29, 2000, which was not published in English under PCT Article 21(2). All references, whether the WIPO publication, the U.S. patent application publication, or the U.S. patent, of an international application that was filed on or after November 29, 2000 but was not published in English under PCT Article 21(2) have no 35 U.S.C. §102(e) prior art date at all. According to 35 U.S.C. §102(e), no benefit of the international filing date (nor any U.S. filing dates prior to the international application) is given for 35 U.S.C. §102(e) prior art purposes if the International Application was published under PCT article 21(2) in a language other than English, regardless of whether the

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international application entered the national stage.¹ The international application that Inoue (US Pub. 2004/0117309) is based upon is PCT/JP02/06945, which was filed on July 9, 2002. Thus, Inoue (US Pub. 2004/0117309) has no 35 U.S.C. §102(e) date.

PCT/JP02/06945 was published under Article 21(2) in Japanese as WO 03/007158 on January 23, 2003, and this publication date is prior to the U.S. filing date of the present Application, but after the Japanese priority date (JP 2002-321359) of November 5, 2002 of the present application. WO 03/007158 is written in Japanese and Applicants representative has not studied this reference. Nonetheless, a translation of JP 2002-321359 is provided herewith, along with a statement certifying that the translation is accurate, thereby perfecting priority to JP 2002-321359 filed November 5, 2002 and disqualifying WO 03/007158 as a reference.

As Inoue (US Pub. 2004/0117309) is not prior art, Applicants respectfully submit that the outstanding grounds of rejection are traversed, as all of the grounds of rejection rely on the Inoue (US Pub. 2004/0117309) reference.

As Applicants have not amended the claims in response to any rejection of record, should a further rejection be applied in the next Action based upon newly cited references, Applicants submit that such an action **cannot properly be considered a Final Office Action.**

Consequently, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

¹ 35 U.S.C. §102(e), and MPEP §706.02(f)(1) (see example 5 on page 700-34 and the flow chart on page 700-40 of MPEP, original 8th edition, August 2001, latest revision August 2006).

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Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Respectfully submitted,

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